

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 25, 2009

Memorial Day

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 26, 2009

- D054520 In re S. B., a Juvenile**
Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.
- D055079 In re J.G., a Juvenile**
Appellant's opposed motion to file notice of appeal constructively and request for stay is denied.
- D052757 People v. Mora**
The judgment is affirmed.
Huffman, Acting P.J.; We Concur: O'Rourke, J., Irion, J.
- D052890 CCLJ, LLC et al. v. City of San Diego**
The judgment is affirmed. The parties shall bear their own costs on appeal.
McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.
- D052873 Tesh v. LeTourneau**
Affirmed. Irion, J.; We Concur: Haller, Acting P.J., Aaron, J.
- D053284 People v. Vanderford**
Affirmed. Irion, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.
- D050842 People v. Eliseo**
The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.
- D055129 People v. Groce**
The notice of appeal filed on May 11, 2009, and minute orders dated August 14, 2006, and May 12, 2009, have been read and considered by Presiding Justice McConnell and Associate Justices Benke and McDonald. An order denying a defendant's motion for a new trial is not independently appealable but is reviewable on appeal from the final judgment. (*People v. Ault* (2004) 33 Cal.4th 1250, 1261; Pen. Code, § 1237, subd. (a).) Judgment was imposed in this matter on August 14, 2006. The notice of appeal filed on May 11, 2009, is from a nonappealable order. The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 26, 2009 (Continued)

D054834 Lewis v. Dakota Underground/Rox

The court has received defendant's letter dated May 8, 2009 and plaintiff's letter dated May 18, 2009, addressing the issue of whether plaintiff's notice of appeal was timely filed, and has reviewed the superior court file to verify the entry date of the judgment from which the appeal is taken. Plaintiff's letter and the court file reveal that plaintiff initially filed a notice of appeal from the judgment on November 24, 2008, and filed a notice of abandonment of that appeal on December 19, 2008. On March 23, 2009, she filed the notice of appeal in this case from the same judgment. Because plaintiff's notice of abandonment of the first appeal does not state that the abandonment is without prejudice, plaintiff was required to bring a motion in the trial court to set aside the abandonment before pursuing this appeal, and her failure to do so requires dismissal of the appeal. (*In re Oliver's Conservatorship* (1961) 192 Cal. App. 2d 832, 836-837.) To the extent the abandonment of the first appeal does not affect the validity of this appeal, the appeal must be dismissed as untimely. The superior court file shows the judgment was entered on September 19, 2008, and there is nothing in the file indicating a later entry date. The court is powerless to deem plaintiff's notice of appeal timely based on her reliance on representations by superior court clerks that the judgment was entered on September 22, 2008. Neither the trial court nor this court may extend the time to appeal, even to relieve against mistake, inadvertence, accident, or misfortune. (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 372-373.) The matter having been considered by Presiding Justice McConnell and Associate Justices Benke and McDonald, the appeal is dismissed.

D054966 Gough v. Sewell

The court has received respondent's letter dated May 15, 2009 and appellant's letter dated May 22, 2009, addressing the issue of whether appellant's notice of appeal was timely filed. The matter having been considered by Acting Presiding Justice Nares and Associate Justices Benke and McDonald, the appeal is dismissed as untimely.

D054756 People v. Rose et al.

Affirmed. Irion, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D052336 Fisher v. San Diego Gas & Electric

Petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 27, 2009

- D054508 Carleen T. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The petition is denied. Benke, Acting P.J.; We Concur: O'Rourke, J., Irion, J.
- D053368 People v. Weaver**
The case is remanded to the trial court so that it may exercise its discretion to strike the Health and Safety Code section 11370.2, subdivision (a) enhancements pursuant to Penal Code section 1385 or impose them. If the court strikes the prior drug conviction enhancement, it shall set forth its reasons in an order entered upon the minutes. (People v. Bonnetta (2009) 46 Cal.4th, 143.) The trial court shall amend the abstract of judgment accordingly. Also on remand, the court shall amend the abstract of judgment to reflect an additional 85 days of presentence custody credit. The court shall forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., McDonald, J.
- D054331 In re Melissa B., a Juvenile**
The order terminating parental rights is affirmed.
McIntyre, J.; We Concur: McDonald, Acting P.J., Irion, J.
- D052832 People v. Arreguin**
The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., McIntyre, J.
- D054252 People v. Walker**
The judgment is affirmed. Aaron, J.; We Concur: Nares, Acting P.J., Irion, J.
- D053083 People v. Thompson**
The May 15, 2008, order is reversed and the sentence imposed on March 24, 2008, as to count 25 is reinstated. The court shall amend the abstract of judgment to reflect the award of two days of section 4019 credits. In all other respects, the judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Irion, J.
- D054601 People v. Ryan et al.**
Ryan's judgment is reversed and the matter is remanded. Ryan shall have 30 days after the issuance of the remittitur to have retained counsel make an appearance and the trial court shall allow new counsel a reasonable opportunity to fully investigate and present a new trial motion. If Ryan cannot afford to retain counsel, the trial court shall appoint new counsel to fully investigate and present a new trial motion. If a motion for new trial is not filed or the motion is denied, the judgment and sentence previously imposed shall be reinstated.
McIntyre, J.; We Concur: Benke, Acting P.J., Nares, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 27, 2009 (Continued)

- D053534 Eric M., a Minor, etc. v. Cajon Valley Union School District et al.**
The opinion filed May 20, 2009, is ordered certified for publication. The attorneys of record are: Thomas J. Castonguay and Bruce Cornblum for Plaintiff and Appellant. Daniel R. Shinoff and Paul V. Carelli of Stutz, Artiano, Shinoff & Holtz for Defendant and Respondent.
- D054517 In re Alve on Habeas Corpus**
The petition is denied.
- D053099 People v. Sanchez**
The judgment is modified to reflect a three-year lower term sentence on count one and a full strength consecutive six-year middle term sentence on count 11. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation. Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.
- D055008 Pacific Specialty Insurance Company v. Superior Court of San Diego County/Moore et al.**
The petition is denied.
- D054514 In re Sengaloune on Habeas Corpus**
The petition is denied.
- D052214 People v. Shepard**
The petition for rehearing is denied.
- D055146 In re D.F., a Juvenile**
This appeal has been reviewed by Associate Justices Huffman, Benke and McDonald. Insofar as the appeal challenges the termination of parental rights, it is untimely. Insofar as appellant seeks disclosure of adoption records, they are not part of the record in this case and are not subject to disclosure under Welfare and Institutions Code section 827. The appeal is therefore dismissed.
- D053811 In re Alex O., a Juvenile**
The stay is lifted; the appeal is dismissed as moot in light of the disposition in the writ proceeding (D053979).

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 27, 2009 (Continued)

- D053979 Alex O. v. Superior Court of San Diego County, Juvenile Division/People**
Although in the border region there are no doubt juveniles for whom substantial travel limitations are an appropriate means of promoting rehabilitation and preventing future criminality, the record here does not support imposition of such limitations. Let a peremptory writ of mandate issue directing the juvenile court to vacate the September 17, 2008 order and enter an order limited to the following: "Minor shall give the Probation Officer notice prior to entering the United States." Benke, Acting P.J.; We Concur: McIntyre, J., Irion, J.
- D054480 In re Lockett on Habeas Corpus**
The petition is denied.
- D052768 In re E.S., a Minor**
The petition for rehearing is denied.
- D054932 In re Henry on Habeas Corpus**
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 28, 2009

- D054420 Norton, Jr. v. Portillo, Jr. et al.**
Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.
- D051166 Leeper-Johnson v. The Prudential Insurance Company of America**
The opinion filed May 13, 2009, is modified (no change in judgment). The petition for rehearing is denied.
- D052880 People v. Munoz**
The judgment is affirmed. In light of the inconsistencies in the record, the matter is remanded to the trial court to determine defendant's true name and, if necessary, to correct the abstract of judgment in that regard.
Nares, J.; We Concur: Benke, Acting P.J., McIntyre, J.
- D054066 In re Samuel G., a Juvenile**
The order is affirmed. McDonald, J.; We Concur: McConnell, P.J., Benke, J.
- D053876 In re Marriage of Pederson**
Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.
- D054646 In re J. V., a Juvenile**
Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316).
- D054532 Leach v. Cleveland**
The petition is denied.
- D052730 Smith et al. v. Radioshack Corporation**
The judgment is affirmed. Appellants to pay RadioShack's costs on appeal.
Haller, Acting P.J.; We Concur: McDonald, J., Irion, J.
- D055120 Rincon Properties, Inc. v. O'Donnell**
The petition for transfer filed on May 15, 2009, under California Rules of Court, rule 8.1008(b), has been read and considered by Justices Benke, Huffman and McDonald. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 29, 2009

- D052842 In re Marriage of Mataele and Brittain**
The petition for rehearing is denied.
- D053909 In re Erin G., a Minor**
D054375 In re Anthony M. on Habeas Corpus
The pending petition for writ of habeas corpus, *In re Anthony M. D054375*, is consolidated with the pending appeal *In re Erin G. D053909*, for disposition.
- D055142 Sommer v. The Superior Court of San Diego County/People**
The petition is denied.
- D053909 In re Erin G., a Minor**
D054375 In re Anthony M. on Habeas Corpus
The judgment terminating parental rights is reversed and remanded to the trial court for further proceedings. If, after proper service of notice, Anthony appears and acknowledges paternity, and/or the court determines that Anthony is Erin's biological father, the court shall comply with applicable ICWA requirements for inquiry and notice, if so indicated. In view of the disposition of this appeal, the petition is denied as moot. Irion, J.; We Concur: Haller, Acting P.J., McIntyre, J.
- D053124 People v. Murray**
The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.
- D054542 In re Hunter D., a Juvenile**
The appeal is dismissed.
- D053321 In re Estate of Hazewinkel**
The judgment is reversed with directions to conduct further proceedings admitting the extrinsic evidence on the trust beneficiary issues and to include it in the interpretation of the trust documents; with regard to the trust transfer deed, the trial court is directed to confirm its order regarding its invalidity. The remaining awards in the judgment that are related to the trust issues (monetary relief, reimbursement of attorney fees and costs, and accounting) are vacated, and those issues shall be resolved upon remand in accordance with the current circumstances found by the probate court. No appellate attorney fees are awarded; each party shall bear its own costs. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.
- D054542 In re Hunter D., a Juvenile**
The appeal is dismissed. Benke, Acting P.J.; We Concur: Nares, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 29, 2009 (Continued)

- D052810 People v. Tapia**
The abstract of judgment shall be amended to provide the term imposed on count 9 runs concurrently to the principal term and, as so amended, the judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., Irion, J.
- D054473 In re Blair on Habeas Corpus**
The petition is denied.
- D054513 In re Bell on Habeas Corpus**
The petition is denied.
- D051396 People v. Gaut**
The judgment is affirmed.
O'Rourke, J.; We Concur: McDonald, Acting P.J., Irion, J.
- D055174 In re Williams on Habeas Corpus**
The petition is denied.
- D054604 In re Jackson on Habeas Corpus**
The petition is denied.
- D054396 People v. Raygoza**
The judgment is affirmed.
O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.
- D054930 In re Barno on Habeas Corpus**
The petition is denied.
- D055066 In re Carrizoza on Habeas Corpus**
The petition is denied.
- D054645 In re Adair, Jr. on Habeas Corpus**
The petition is denied.
- D054471 Riverwatch et al. v. County of San Diego Department of Environmental Health et al.**
Upon written request filed by appellant Riverwatch, the appeal is dismissed as to Riverwatch only, and the remittitur is ordered to issue immediately.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 29, 2009 (Continued)

D055095 Stephanie A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Stephanie A. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D055097 Mary S. v. Superior Court of San Diego County/San Diego County Health and Human Service Agency

The attorney for petitioner Mary S. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D055107 W. E. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner W. E. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.